IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

OP.No. 23729 of 2002(Y)

PETITIONER:

V.A. TOMY, VARIATH HOUSE,
CHERANELLUR P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.NOBLE MATHEW

RESPONDENTS:

---

1. GREATER COCHIN DEVELOPMENT AUTHORITY
REPRESENTED BY ITS SECRETARY,
KADAVANTHARA, KOCHI-20.

2. SPECIAL TAHASILDASR, REVENUE
RECOVERY, KANAYANNUR TALUK, ERNAKULAM.

3. THE DISTRICT COLLECTOR, ERNAKULAM.

BY ADV. SRI.P.R.RAMACHANDRA MENON, SC,GCDA FOR R1
R2&3 BY G.P. SMT.SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.40359/2002 IN O.P. NO.23729/2002

DISMISSED:

6.12.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: PHOTOCOPY OF LOAN SANCTIONING ORDER OF R1.

P2: PHOTOCOPY OF PROHIBITORY ORDER OF R2.

P3: PHOTOCOPY OF STATEMENT OF ACCOUNTS.

P4: PHOTOCOPY OF LETTER OF R1 DT.2.7.2001.

P5: PHOTOCOPY OF LETTER DT.22.7.2002.

P6: PHOTOCOPY OF LETTER DT.3.8.2002 OF R1.

P7: TRUE COPY OF LETTER DT.13.8.2002.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....

O.P. No.23729 of 2002

.....

Dated this the 6th day of December, 2007.

JUDGMENT

The petitioner is challenging Ext.P6 whereunder GCDA has demanded an amount of Rs.1,85,748/- being the balance loan amount payable by the petitioner together with interest. The petitioner has availed a loan of Rs.1,01,439/- from the GCDA which was repayable in 108 equal monthly instalments. Even though petitioner remitted Rs.58,985/-, he has committed default thereafter which led to accrual of interest and penal interest. The petitioner applied for settlement of liability by paying the balance principal amount of Rs.42,452/- which was rejected by the GCDA. However, when the O.P. was admitted, this court felt that petitioner should pay atleast the admitted balance liability to consider relief pertaining to interest. Accordingly by order dated 10.10.2002 petitioner was directed to pay Rs.42,452/-. It is not known whether petitioner has made payment of this amount. If petitioner has remitted Rs.42,452/-, then the balance payable will still be around Rs.1,50,000/- in 2002 according to GCDA's claim. Counsel for GCDA rightly pointed out that interest is also payable by the petitioner and the total payment so far made accounts for just the principal

amount. Further contention of the GCDA is that the fund is sourced from HUDCO and under refinancing petitioner has to pay interest. I do not find any justification for the petitioner claiming waiver of complete interest. However, I feel petitioner can be granted complete waiver of penal interest provided the balance arrears are paid exclusive of penal interest within a reasonable time. The O.P. is accordingly disposed of directing the GCDA to make adjustments by crediting payments already made and rework interest only at contract rate i.e. without adding any penal or default interest and issue demand notice to the petitioner for the petitioner to discharge liability as above. GCDA will give statement of accounts to the petitioner and grant reasonable time for payment which will be communicated within two weeks from the date of production of copy of this judgment. If payment is not made within the time granted by GCDA, then the waiver of penal interest granted by this court will stand automatically vacated and respondents are free to proceed for recovery of the entire balance.

C.N.RAMACHANDRAN NAIR
Judge

pms